

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 531 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HIRALAL S DHOBI

Versus

BHANUSHANKER S JOSHI

Appearance:

MR VIJAY H PATEL for Petitioner

MR PRANAV G DESAI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 15/09/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the original defendant-tenant, who was sued by the respondent-plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The plaintiff-landlord had sued the defendant-tenant to recover possession of the rented

premises which admeasures 5 ft x 10 ft, situated in Juna Bazar, Himamtnagar. It is common ground that the premises were let out to the tenant for business purposes, and was in fact being used for business purposes, the defendant doing business therein as a Dhobi and doing only ironing work.

3. The landlord had filed a suit for eviction on the ground that he reasonably and bonafide required the suit premises for his personal use, that he was, therefore, entitled to a decree for eviction under section 13(1)(g) of the said Act, and that he would suffer greater hardship if the decree were refused than the hardship suffered by the tenant if the decree were passed.

4. The trial court, after framing appropriate issues on the basis of the pleadings of the parties, and after the appreciation of the evidence on record, found in favour of the plaintiff and passed a decree for eviction against the defendant-tenant. The trial court found that the plaintiff-landlord reasonably and bonafide required the suit premises for establishing his son in the suit premises, for use as an office, his son being a practising advocate for some time. The trial court also found that greater hardship would be suffered by the landlord in refusing the decree and that the tenant would not suffer greater hardship if the decree was passed.

5. The tenant being aggrieved by the decree of eviction passed by the trial court preferred an appeal under section 29(1) of the Bombay Rent Act. The lower appellate court, after reappraisal of the evidence on record, confirmed the decree of the trial court and dismissed the appeal filed by the tenant.

6. Hence the present revision under section 29(2) of the Bombay Rent Act at the instance of the original defendant-tenant.

7. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappraise the evidence on record, cannot discard concurrent findings of fact based

on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

8. Only a few salient features require to be noted.

The trial court had raised issue no.3 as to whether the defendant had acquired other suitable residential accommodation, and had found that the plaintiff had succeeded in proving the same. This issue has been discussed by the lower appellate court and the lower appellate court rightly came to the conclusion that the finding recorded by the trial court on this issue is not only redundant, but is also extraneous to the controversy between the parties. The landlord had not sued the tenant for a decree of eviction under section 13(1)(l) of the said Act, and therefore whether the tenant had acquired other suitable residential accommodation or not was an irrelevant consideration, so far as deciding the landlord's right under section 13(1)(g) of the said Act is concerned.

9. Even otherwise, even if the suit is considered by some stretch of imagination to be a suit under section 13(1)(l) of the said Act, it is common ground that the rented premises which were the subject matter of the suit, were let out and used for business purposes, and that therefore the defendant acquiring other residential accommodation would be irrelevant. In fact under such circumstances section 13(1)(l) would not have any application at all.

10. On the facts of the case, even if reappreciation of evidence were to be exercised by this court, it is not possible to hold that the lower appellate court was wrong in its conclusion that the landlord had succeeded in establishing his reasonable and bonafide requirements in respect of the suit premises.

11. The only point which could be argued by the learned counsel for the tenant is in the context of relative hardship.

12. It was sought to be contended that the landlord himself had one premises in his possession which were vacant at the point of time, which were however let out to a concern by the name Hemant Chania House. Thus,

according to the learned counsel for the tenant, this would not only militate against the reasonable and bonafide requirement of the landlord, but would also indicate the absence of hardship on his part if a decree is refused.

13. Firstly, there is ample evidence on record which has been appreciated correctly by the lower appellate court, to the effect that the premises rented out to M/s Hemant Chania House are substantially smaller than the rented premises in the present case. For this reason it could not possibly be suggested that those premises were suitable for use by the landlord to set up his son's office as a professional lawyer. The premises let out to M/s Hemant Chania House is established on the facts of the case to be 5 ft x 8 ft. whereas the suit shop is 5 ft x 10 ft.

14. Furthermore, the suit shop of which the landlord requires possession is either in the same building or very close to the landlord's own professional office. It goes without saying that the plaintiff who is also a professional advocate would find it both convenient, practicable and as also reasonable to have his son's office close by. The premises rented out to M/s Chania House, though not identified in terms of location or distance, is not proved by the defendant to be closer to the landlord's professional office as compared to the rented premises.

15. On the question of relative hardship the lower appellate court found on a total appreciation of the evidence that the balance of convenience is in favour of the landlord and that the tenant would not suffer greater hardship than the landlord if a decree is passed.

16. It is found that the tenant has his own building in Ambawadi area of Himmatnagar town. According to the defendant, the area of Ambawadi is not suitable for a washer man. This, however, is merely his opinion without any supporting evidence. The defendant has failed to establish that he would not be able to set up his business in the Ambawadi area or to get a significant income from his business if established in that area. It is an admitted fact that the defendant has not even attempted to set up a business in his own premises in the Ambawadi area. It is pertinent to note that the defendant's business in the suit premises is only of ironing clothes. It is extremely difficult to accept a mere contention on the part of such a defendant that he would not be able to get even clothes for ironing in the

Ambawadi area.

17. It cannot be overlooked that admittedly the defendant also has another premises located in the compound of the District Cooperative Bank, where the work carried out by the defendant is of boiling and washing clothes. It goes without saying that the work of boiling and washing clothes goes in conjunction with the business of ironing clothes. It is, therefore, not possible to accept the mere contention of the defendant that the two businesses cannot be run together.

18. To summarise, therefore, it is not possible to hold that the judgement and decree of the two courts below amount to a perversity in law. It is, therefore, not possible nor justifiable to interfere with the said judgements and decrees in the present revision.

19. This revision is, therefore, dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

20. At the request of learned counsel for the petitioner-tenant the operation of the present judgement and order is stayed upto 17th November 2000 in order to enable the present petitioner to approach the Supreme Court. It is clarified that no further extension shall be granted.
